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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/508,405      | 05/08/2000  | PAIVI HUOVINEN       | 365-442P            | 9154             |

2292 7590 10/18/2002

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EXAMINER

RABAGO, ROBERTO

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1713

DATE MAILED: 10/18/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/508,405

Applicant(s)

HUOVINEN ET AL.

Examiner

Rob Rábago

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 July 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 and 20-42 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 and 42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-12, 14, 15, 17, 20-30, 39 and 40 is/are rejected.
- 7) ☒ Claim(s) 13, 16, 31-38 and 41 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Rejections based upon Cecchin '862, as well as objections to the specification and the claims, are withdrawn in view of amendment.

***Claim Rejections - 35 USC § 112***

2. Claims 15, 20, 27 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(a) In claim 15, the inclusion of "typically" renders the claimed scope indefinite.

(b) Claim 20 depends from a cancelled claim.

(c) Claim 27 (and claim 30 by dependency) is indefinite because it does not indicate whether the condensate is recirculated to the first reactor or the second reactor. The prior draft of the claim did not contain this problem.

***Claim Rejections - 35 USC § 102 and/or 103***

3. Claims 8-11, 17, 21-26, 28-30, 39 and 40 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Andtsjo et al. (WO97/13790).

Examples 11-12 disclose a two stage polymerization of propylene including a loop reactor and a gas phase reactor which describes all claimed limitations. Although the MFR<sub>2</sub> has not been expressly disclosed, this limitation would be inherent because

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prior examples have shown that this same catalyst would make a polymer with the claimed  $\text{MFR}_2$  when hydrogen is substantially or completely excluded (see Example 3). The burden of proof is shifted to applicants to show that the applied reference examples do not contain all claimed limitations. *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

In the event that any differences can be shown for the product specified in the claims as opposed to the product taught in the applied reference, such differences would have been obvious to one of ordinary skill in the art as a routine modification of the product in the absence of a showing of unexpected results. *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985). Specifically, the reference directs that hydrogen should be substantially or completely removed from the reaction mixture before feeding to the gas phase reactor, and this recommended step further ensures that the  $\text{MFR}_2$  of the high molecular weight component would be lower than the maximum set forth in the instant claims.

4. Claims 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andtsjo et al. (WO97/13790).

The parent claims have been discussed with respect to this reference above. The elements of claims 12 and 14 have been disclosed at page 10, line 26, and at page 11, lines 1-11, respectively. One of ordinary skill in the art would be motivated to use these alternative embodiments because they have been specifically recommended by the reference authors, with reasonable success expected.

***Allowable Subject Matter***

5. Claims 13, 16, 31-38 and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 32 is further objected to on the grounds that the word "claim" should precede "8" in line 1.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Rábago whose telephone number is (703) 308-4347. The examiner can normally be reached on Monday - Friday from 9:30 am - 3:00 pm.

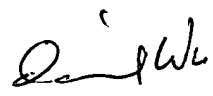
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (703) 308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Rob Rábago  
Examiner  
Art Unit 1713

RR

  
October 16, 2002

  
DAVID W. WU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700